

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 5th day of October, two thousand seven.

PRESENT:

HON. THOMAS J. MESKILL,
HON. CHESTER J. STRAUB,
HON. DEBRA ANN LIVINGSTON,
Circuit Judges.

YUN YAN LIN,
Petitioner,

v.

PETER D. KEISLER,¹
ACTING U.S. ATTORNEY GENERAL
Respondent.

07-1498-ag
NAC

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting Attorney General Peter D. Keisler is automatically substituted for former Attorney General Alberto R. Gonzales as a respondent in this case.

1 **FOR PETITIONER:** Grant C. Wright, New York, New York.

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3 **FOR RESPONDENT:** Peter D. Keisler, Acting U.S.
4 Attorney General, former Assistant
5 Attorney General, Civil Division,
6 Linda S. Wernery, Assistant
7 Director, Angela N. Liang, Attorney,
8 United States Department of Justice,
9 Office of Immigration Litigation,
10 Washington, District of Columbia.

11
12 UPON DUE CONSIDERATION of this petition for review of a
13 decision of the Board of Immigration Appeals ("BIA"), it is
14 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
15 review is DENIED.

16 Petitioner Yun Yan Lin, a native and citizen of China,
17 seeks review of the March 22, 2007 order of the BIA
18 affirming the August 23, 2005 decision of Immigration Judge
19 ("IJ") Elizabeth A. Lamb denying petitioner's application
20 for asylum, withholding of removal, and relief under the
21 Convention Against Torture ("CAT"). *In re Yun Yan Lin*, No.
22 A98 354 606 (B.I.A. Mar. 22, 2007), *aff'g* No. A98 354 606
23 (Immig. Ct. N.Y. City Aug. 23, 2005). We assume the
24 parties' familiarity with the underlying facts and
25 procedural history of the case.

26 When the BIA agrees with the IJ's adverse credibility
27 determination and, without rejecting any of the IJ's
28 grounds, emphasizes particular aspects of the decision, we

1 "review both the BIA's and IJ's opinions - or more
2 precisely, we review the IJ's decision including the
3 portions not explicitly discussed by the BIA." *Yun-Zui Guan*
4 *v. Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). We review
5 the agency's factual findings, including adverse credibility
6 determinations, under the substantial evidence standard,
7 treating them as "conclusive unless any reasonable
8 adjudicator would be compelled to conclude to the contrary."
9 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v. INS*, 386
10 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled in part on other*
11 *grounds, Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d
12 296, 305 (2d Cir. 2007) (*en banc*).

13 Here, substantial evidence supports the agency's
14 adverse credibility determination. Both the BIA and IJ
15 correctly noted that, while Lin testified that her father
16 was beaten more than once by authorities who came looking
17 for her, the beatings were not mentioned either in Lin's
18 asylum application or her father's letter of support. This
19 discrepancy between Lin's testimony and the record evidence
20 was material to her asylum claim. If credited, evidence
21 regarding the alleged beatings would have helped establish
22 that the Chinese government was actively searching for Lin

1 due to her association with the underground church and that
2 her fear of persecution was subjectively and objectively
3 reasonable. See *Zhou Yun Zhang*, 386 F.3d at 74-78.

4 Lin explained that her father did not mention the
5 beatings in his letter because he did not want Lin to know
6 about them. She testified that she did not mention the
7 beatings in her asylum application, which specifically asks
8 whether family or close friends have experienced harm,
9 because she "neglected" to do so. Although these are
10 plausible explanations for the omissions, a reasonable
11 fact-finder could have declined to accept them. See *Wu Biao*
12 *Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003). Accordingly,
13 the agency did not err in finding that this discrepancy
14 undermined Lin's credibility.

15 The BIA and IJ also pointed to the fact that Lin never
16 testified to her alleged "blacklisting," despite including
17 it in her asylum application, or mentioned that police had
18 distributed her photograph in an attempt to track her down,
19 as a friend claimed in a letter of support. These
20 discrepancies were each material to Lin's asylum claim, and
21 the IJ properly relied on them in making her adverse
22 credibility finding. See *Liang Chen v. U.S. Att'y Gen.*, 454
23 F.3d 103, 106-07 (2d Cir. 2006) (IJ may rely upon the

1 cumulative impact of discrepancies and omissions in
2 rendering a credibility finding).

3 Finally, the IJ pointed to two instances in which Lin
4 failed to present adequate corroborating evidence, which
5 reasonably was available to her, in support of her
6 testimony. First, Lin failed to provide any corroboration
7 of her attendance at a Catholic church in New York City.
8 Second, she provided no documentary evidence that her friend
9 in China ever was sentenced to prison. Lin's failure
10 adequately to corroborate her testimony bore on her
11 credibility because the absence of corroboration rendered
12 her unable to rehabilitate testimony that already had been
13 called into question. See *Xiao Ji Chen v. U.S. Dep't of*
14 *Justice*, 471 F.3d 315, 341 (2d Cir. 2006).

15 In sum, substantial evidence in the record, considered
16 in the aggregate, supports the agency's adverse credibility
17 finding and the resulting determination that Lin failed to
18 establish her eligibility for asylum. See *Ramsameachire v.*
19 *Ashcroft*, 357 F.3d 169, 179 (2d Cir. 2004) ("Although the
20 BIA did not parse the two means of establishing refugee
21 status, its adverse credibility determination necessarily
22 precluded finding that [the applicant] had demonstrated that
23 he had suffered persecution in the past, and that [he]

1 subjectively feared that he would be harmed in the
2 future."). The agency's evaluation was not flawless, but
3 remand is not required in this case where it can be
4 confidently predicted that the agency would adhere to the
5 same decision upon remand, after correcting for any flaws.
6 *Xiao Ji Chen*, 471 F.3d at 335.

7 In addition, because Lin's claims for withholding of
8 removal and CAT relief were premised on the same factual
9 basis as her asylum claim, the adverse credibility
10 determination necessarily precludes success on those claims
11 as well. See *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d
12 Cir. 2006); *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d
13 520, 523 (2d Cir. 2005).

14 For the foregoing reasons, the petition for review is
15 DENIED. As we have completed our review, the pending motion
16 for a stay of removal is DENIED as moot.

17
18 FOR THE COURT:
19 Catherine O'Hagan Wolfe, Clerk
20

21 By: _____